



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Shawn Wentz, Police
Sergeant (PM0787V), Deptford
Township

Acknowledgment of Settlement

CSC Docket No. 2022-117

ISSUED: AUGUST 6, 2021 (HS)

Shawn Wentz, represented by Michael C. Mormando, Esq., requests a retroactive date of appointment pursuant to a settlement agreement.

As background, the examination for Police Sergeant (PM0787V), Deptford Township (Deptford) was held in October 2017. The resulting eligible list promulgated on May 24, 2018 and expires on May 23, 2022.¹ The list was certified on June 8, 2018 with the first and second ranked non-veteran eligibles receiving permanent appointments, effective July 9, 2018. The list was then certified on April 26, 2019 with the third and fifth ranked non-veteran eligibles receiving permanent appointments, effective May 6, 2019, and the fourth ranked veteran eligible being removed from the list. The list was again certified on October 18, 2019 with the sixth ranked non-veteran eligible, the seventh ranked non-veteran eligible, and the eighth ranked veteran eligible receiving permanent appointments, effective November 11, 2019.

The appellant could not sit for the examination as originally scheduled in October 2017 due to a military deployment. However, he was granted, and passed, a make-up examination. As a result, on November 8, 2019, the appellant was placed on the eligible list as a veteran above the (since appointed) eligible who had ranked third. In light of the three appointments that were made from the October 18, 2019 certification on November 11, 2019 and his own lack of promotion at the time, the appellant asserted that he had been passed over for promotion because of

¹ The eligible list was extended one year.

his military commitments and filed a lawsuit against Deptford alleging violations of the Uniformed Services Employment and Reemployment Rights Act. While the lawsuit was pending, the list was certified for a fourth time on January 20, 2021 with the appellant receiving a permanent appointment, effective April 12, 2021. Nevertheless, the appellant continued the lawsuit in order to obtain back pay and retroactive appointment. On or about July 13, 2021, the parties settled the lawsuit. In pertinent part, the settlement provides that Deptford, subject to Civil Service Commission (Commission) approval, will, for seniority purposes only, make the appellant's appointment to Police Sergeant retroactive to November 11, 2019, *i.e.*, the effective date of the three appointments made from the October 18, 2019 certification. The settlement further provided that the appellant will have the burden to obtain Commission approval for his retroactive appointment. The settlement also provides that making the appellant's promotion to Police Sergeant effective November 11, 2019, subject to Commission approval, gives the appellant the time-in-grade necessary to sit for any upcoming Police Lieutenant examination. This request followed. It is noted that the issue of back pay was finalized by the settlement.

Agency records indicate that the appellant has submitted an application for the Police Lieutenant (PM4094C), Deptford, examination, which had a filing deadline of July 21, 2021 and has a closing date of September 30, 2021. The examination is tentatively scheduled to be held in October 2021.

CONCLUSION

When a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay, or other good cause, on notice to affected parties. *N.J.A.C.* 4A:4-1.10(c).

Applicants for promotional examinations shall have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. *N.J.A.C.* 4A:4-2.6(a)1.

In this matter, a settlement was reached between the parties. The policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 *N.J.* 465 (1990); *Honeywell v. Bubb*, 130 *N.J. Super.* 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 *N.J. Super.* 472 (App. Div. 1961), *cert. denied*, 35 *N.J.* 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. No such compelling circumstances exist here. Further, a review of the settlement agreement indicates that it does not violate Civil Service law or rules. Accordingly, good cause exists to grant the appellant a retroactive date of permanent appointment to the title of Police Sergeant, effective November 11, 2019, for seniority purposes.

As to the appellant's eligibility for upcoming Police Lieutenant examinations, it is noted that, generally, an applicant must have actually served in and performed the duties of the title of Police Sergeant during the requisite time-in-grade in order to be eligible. Nevertheless, as already noted, settlements are strongly favored. In this case, the parties' settlement clearly intends that the appellant's time-in-grade for purposes of his eligibility for any future Police Lieutenant examination in Deptford, including PM4094C, would be calculated based on his November 11, 2019 retroactive date of permanent appointment to Police Sergeant. As such, good cause exists to implement this aspect of the settlement as well. The appellant is to provide a copy of this decision with any future Deptford Police Lieutenant examination application he may file.

ORDER

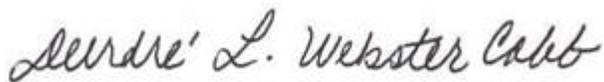
Therefore, the Commission acknowledges the settlement between the parties and orders that the permanent appointment of Shawn Wentz to the title of Police Sergeant, effective November 11, 2019, be recorded, for seniority purposes.

Additionally, the Division of Agency Services shall calculate Wentz's time-in-grade for purposes of his eligibility for any future Police Lieutenant examination in Deptford Township, **including PM4094C**, using his November 11, 2019 retroactive date of permanent appointment to Police Sergeant.

It is further ordered that Wentz provide a copy of this decision with any future Deptford Township Police Lieutenant examination application he may file.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF AUGUST, 2021



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c. Shawn Wentz
Michael C. Mormando, Esq.
Thomas Newman, Jr.
Division of Agency Services
Records Center